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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
  
Amendment of the  
Commission's Rules  
Concerning Maritime  
Communications

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PR Docket No. 92-257

To: The Commission

JOINT REPLY COMMENTS

INDUSTRIAL TELECOMMUNICATIONS  
ASSOCIATION, INC.  
COUNCIL OF INDEPENDENT  
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Date: July 15, 1993

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## S U M M A R Y

The Industrial Telecommunications Association, Inc. ("ITA") and the Council of Independent Communication Suppliers ("CICS") urge the Federal Communications Commission to proceed with its proposal to permit Part 90 industrial and land transportation eligibles to access the nine VHF public correspondence frequency pairs. The proposal, if implemented, would provide much need relief for the spectrum congestion facing industrial and land transportation entities.

As illustrated by relevant licensing data for the Special Industrial Radio Service, congestion in the 150-170 MHz band afflicts both urban and rural areas. The Commission's proposal has considerable merit because it will promote more efficient spectrum utilization and help to relieve existing congestion on the land mobile VHF channels, both in rural and urban areas.

The benefits of the Part 88 "refarming" proceeding are long-term. Contrary to the assertions contained ~~in~~ in comments by maritime interests, the refarming proceeding holds little promise

ITA and CICS defer to the Commission's judgment on the appropriate geographic separation between public coast stations and industrial/land transportation stations. However, in the interest of making more efficient use of the spectrum, ITA and CICS urge the Commission to permit industrial and land transportation licensees to operate stations with less than the required separation on a secondary, non-interference basis.

ITA and CICS do not believe that, with the limited amount of frequencies under consideration, there is sufficient spectrum to accommodate public safety licensees. Therefore, ITA/CICS urge the Commission not to permit public safety entities to access the public correspondence channels. However, ITA and CICS believe that the port channels identified in Section 80.373(f) may offer additional prospects for land mobile use. If these frequencies are also made available for land mobile operations, then the Commission could consider designating one or more frequency pairs for public safety use.

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JOINT REPLY COMMENTS  
OF THE  
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.  
AND  
COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS

The Industrial Telecommunications Association, Inc. ("ITA")  
and the Council of Independent Communication Suppliers ("CICS")  
hereby respectfully submit these Reply Comments responsive to the  
various comments filed in the above-captioned proceeding.

I. BACKGROUND

1. In this proceeding, the Commission has proposed, among  
other things, to allow eligible entities in the Industrial/Land  
Transportation Radio Services to use nine marine VHF public  
correspondence channel pairs in areas more than 55 miles from  
navigable waterways and existing co-channel public coast  
stations. In comments filed June 1, 1993, ITA and CICS generally  
supported the Commission's sharing proposal.

2. The Utilities Telecommunications Council ("UTC") also expressed support for the proposal. Comments filed by the

Associated Public Safety Communications Officials ("APSCO") and the

## II. REPLY COMMENTS

### A. Congestion In The 150-170 MHz Land Mobile Band Is Not Solely An Urban Phenomenon.

4. Opponents of the Commission's proposal fall into the trap of treating congestion on the land mobile frequencies solely as an urban phenomenon. The comments of American Commercial Barge Lines Company and Waterway Communications System, Inc. are illustrative. ACBL/WATERCOM state:

Congestion in the land mobile services exists in major metropolitan areas. All of the Commission's studies so evidence. . . . In small metropolitan areas and in rural areas, frequency congestion simply is not a problem.<sup>2</sup>

Similarly, The Ohio River Company asserts that "it is indisputable that congestion in the land mobile services is a function of population density."<sup>3</sup>

5. These statements by ACBL/WATERCOM and The Ohio River Company are not supported by relevant statistics. For example, the Special Industrial Radio Service is heavily rural in nature.<sup>4</sup> Agricultural systems comprise fifty-three percent

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<sup>2</sup> Comments of American Commercial Barge Lines Company and Waterway Communications System, Inc., page 14.

<sup>3</sup> Comments of The Ohio River Company at p. 7.

<sup>4</sup> Like the Special Industrial Radio Service, other Industrial Radio Services are also largely rural in nature. This is one of the factors which caused the Commission to conclude that industrial and land transportation users "commonly operate

(53%) of all of the radio systems authorized in the Special Industrial Radio Service. Statistics relating to use of the Special Industrial 150-170 MHz frequencies provide a particularly useful point of reference for this proceeding.

6. Over seventy percent (70%) of all Special Industrial Radio systems licensed in the 150-170 MHz band nationwide are used for agriculture and agriculture-related services.<sup>5</sup> The Special Industrial Radio Service frequencies at 150-170 MHz are



7. Congestion on the 150-170 MHz Special Industrial Radio Service frequencies is not solely an urban phenomenon. Congestion in the 150-170 MHz band afflicts both urban and rural areas. In some cases, the effects of congestion are more pronounced in rural areas. For this reason, the Commission's proposal has considerable merit, in spite of the fact that it may not offer relief for cities such as New York, Chicago, Houston, Los Angeles and San Francisco.

**B. The Commission Cannot Rely On Docket No. 92-235 To Satisfy Critical Spectrum Needs of Industrial/Land Transportation Users.**

8. MMR, ORCO, and ACBL/WATERCOM all assert that the proposal to permit access to the marine public correspondence channel pairs has been rendered moot by the Commission's private land mobile radio "refarming" proceeding. However, it is not realistic to expect any useful gains from the "refarming" proceeding for at least ten more years.

9. Comments filed in the "refarming" proceeding indicate that there is a broad base of support for the "Consensus Plan" forged by the Land Mobile Communications Council ("LMCC").<sup>7</sup> Under LMCC's Consensus Plan, the year 2004 represents the

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<sup>7</sup> See FCC Public Notice (DA 93-521), dated May 6, 1993, announcing that LMCC had filed its Consensus Plan with the Commission.

earliest date at which existing licensees in the 421-512 MHz and 150-170 MHz bands would be required to implement narrowband equipment. The Commission is already on record as indicating that the final rules in PR Docket No. 92-235 "will be crafted to prevent hardship".<sup>8</sup> This statement suggests that the Commission will not attempt to impose unreasonable narrowband conversion dates on existing users of the 421-512 MHz and 150-170 MHz bands.

10. These circumstances all point strongly to the fact that the benefits of the "refarming" proceeding are long-term, not short-term. There will not be any immediate spectrum "savings" as a result of the "refarming" proceeding.<sup>9</sup> It is disingenuous and self-serving for Mobile Marine Radio, The Ohio River Company, and ACBL/WATERCOM to suggest otherwise.

**C. The Commission's Proposal Will Promote  
More Efficient Use Of The Radio Spectrum.**

11. The critical debate in this proceeding is whether the public correspondence channels can be effectively shared with

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<sup>8</sup> Public Notice, Mimeo No. 31969, released March 1, 1993, "Private Radio Bureau Clarifies Key Refarming Issues."

<sup>9</sup> By contrast, the instant proceeding has the potential to offer immediate relief. ITA and CICS do not believe there is any need, or justification, for deferring the effective date of the changes in this proceeding until Part 88 takes effect. This would only delay the relief offered by this proceeding, without any countervailing benefits.

industrial and land transportation users.<sup>10</sup> MMR, ORCO and ACBL/WATERCOM argue that sharing is neither necessary nor appropriate. ORCO maintains, for example, that the proposal will "endanger maritime operations, and particularly port operations."<sup>11</sup>

12. Relevant licensing data suggests, however, that opponents of the proposal have few public correspondence facilities that could be endangered.<sup>12</sup> According to the Commission's licensing records, the Ohio River Company is not licensed on any of the nine public correspondence frequency pairs at issue in this proceeding. Similarly, the American Commercial Barge Line Company does not hold any assignments for public correspondence frequency pairs in the band 156-162 MHz. WATERCOM has two assignments in the band, one for 161.900 MHz, operating in Jeffersonville, Indiana, and one for 161.800 MHz, also

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<sup>10</sup> As both the Commission and the maritime industry are well aware, the public correspondence channels are, in fact, already "shared" with land mobile systems. There is an abundance of unlicensed land mobile systems currently operating on these channels. ITA and CICS do not condone such use of the frequencies. However, the level of unlicensed activity does stand as evidence of an unmet demand for additional land mobile frequencies. Permitting industrial/land transportation users to access this spectrum may well have a therapeutic effect by reducing the level of unlicensed operations. Given a choice between using the frequencies on an illegal basis and using them legally, many operators will choose to license their systems and thereby avoid potential enforcement action.

<sup>11</sup> ORCO Comments, page 6.

<sup>12</sup> The licensing data used in this analysis is based on the Commission's Master Frequency List.

operating in Jeffersonville, Indiana.

13. Mobile Marine Radio holds a total of 13 assignments, using eight of the nine public correspondence coast frequencies. One of Mobile Marine Radio's assignments is for a station in La Crosse, Wisconsin and another is for a facility in Asbury, Iowa. The remainder of Mobile Marine Radio's assignments are concentrated in the State of Alabama.

14. Thus, on the basis of a total of 15 frequency assignments in four states, MMR, ORCO and ACBL/WATERCOM seek to defeat the Commission's sharing proposal.<sup>13</sup> ITA and CICS urge the Commission to implement its sharing proposal, notwithstanding the opposition of MMR, ORCO and ACBL/WATERCOM. In areas of the country that do not border on navigable waterways, there is the potential to make more efficient use of the frequencies. In this sense, the proposal comports perfectly with the FCC's obligation under Section 1 of the Communications Act of 1934, as amended, "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide . . . radio

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<sup>13</sup> ITA and CICS recognize that there are other entities licensed to operate on the nine public correspondence channels under consideration. However, the licensing data for MMR, ORCO and ACBL/WATERCOM vividly illustrate that the needs of public coast licensees are narrowly confined, both in terms of geography and frequencies. Moreover, as the Commission noted in its proposal, "cellular radio offers increasingly competitive service that is supplanting the use of public coast stations." Notice at paragraph 35. Therefore, the frequency requirements of public coast licensees are likely to decline during future years.

communication service."<sup>14</sup>

**D. Operation On A Secondary, Non-Interference Basis  
Should Be Permitted In Cases Where Proposed I/LT  
Systems Do Not Meet The Minimum Separation Criteria.**

15. The Commission proposed to license industrial/land transportation systems based on a matrix providing for geographic separations ranging from 55 miles to 99 miles, depending on the height and power which the industrial/land transportation licensee would be utilizing. MMR, ORCO, and ACBL/WATERCOM contend that the proposed mileage separations do not sufficiently protect maritime operations. MMR proposes an alternative matrix, which would provide separations ranging from 109 miles to 137 miles.

16. ITA and CICS defer to the Commission's judgment on what the appropriate separations should be.<sup>15</sup> ITA and CICS recognize that it is not in the public interest for land mobile stations to cause harmful interference to public coast station operations. At the same time, however, efficient use of the available spectrum demands that industrial/land transportation applicants be able to use frequencies that may otherwise lie fallow.

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<sup>14</sup> 47 U.S.C. Section 151 (1993).

<sup>15</sup> ITA and CICS do agree with the maritime commenters that, from an engineering standpoint, it would be preferable to have the land mobile base stations transmit on the "coast transmit" frequency rather than the "ship transmit" frequency.

17. In an effort to balance the needs of both maritime licenses and industrial/land transportation users, ITA and CICS recommend that the Commission adopt the following approach:

- a. A minimum separation matrix, taking into account varying levels of antenna heights and ERP that industrial/land transportation licenses might use, should be incorporated into the rules, as the Commission has proposed.
- b. The separation distances promulgated in the matrix would be based on the Commission's expert judgment as to the level of protection actually required for the effective functioning of public coast facilities.
- c. Based upon an appropriate showing, an industrial/land transportation licensee should be permitted to establish a transmitter at distances less than those reflected in the matrix, conditioned on secondary, non-interference operations to co-channel public coast stations.<sup>16</sup>
- d. At a date five years after action in the instant

allocations continues to have merit.<sup>17</sup>

18. By implementing a system which incorporates both a

20. APCO and FCCA urge the Commission to make the nine public correspondence frequencies available for public safety use. However, as ITA/CICS noted in their comments, implementation of the proposal will provide only limited relief to the congestion facing users of the industrial/land transportation frequencies below 800 MHz. ITA and CICS again urge the Commission not to dilute the potential relief for industrial/land transportation users by allowing other services to use the frequencies.<sup>20</sup>

21. One alternative for accommodating the need for additional spectrum that may exist among public safety agencies

19 Under any circumstances, however, ITA/CICS urge the Commission to delete the requirement that the public correspondence frequencies will be available "only when VHF frequencies for government ~~under this Part are not available~~



would be for the Commission to revisit the possibility of allowing Part 90 users to share the channels designated for port operations. In its Notice of Proposed Rule Making, the Commission asked for comment on whether industrial/land transportation sharing should extend to the port channels. The Commission declined to propose such sharing due to concern regarding "the increased interference potential associated with simplex operations."<sup>21</sup> Nonetheless, if the port channels were to be shared with land mobile, then the Commission could perhaps designate a portion of these channels for exclusive use by public safety agencies, as APCO has requested.<sup>22</sup>

### III. CONCLUSION

22. The Commission's proposal in this proceeding will serve the public interest and should be implemented. There is a critical need for additional channels to support industrial and land transportation operations in locations removed from major metropolitan areas. Implementation of the Commission's proposal will provide limited relief for industrial and land

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<sup>21</sup> Notice, fn. 69.

<sup>22</sup> Despite the concerns about the increased interference potential associated with simplex operations, ITA and CICS urge the Commission to examine closely the usage data relating to the port channels. It may be that the level of activity on the port channels will be conducive to sharing with land mobile users. As an example, among MMR, ORCO, ACBL and WATERCOM, the FCC's licensing data base shows only ORCO as holding licenses to operate on the nine port channels that CICS had identified for shared use in its Petition for Rule Making (RM-7956).

transportation users in these areas.

23. The Commission cannot look to the Part 88 "refarming" proceeding for relief in the short-term. The additional capacity which might be made available as a result of the "refarming" proceeding will not offer any useful degree of relief for at least ten years. ITA and CICS urge the Commission to revisit the question of whether the port channels available under Section 80.373(f) of the rules will support land mobile use. Should these channels prove useful for land mobile operations, the Commission could designate a portion of these channels for public safety use.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. and the Council of Independent Communication Suppliers respectfully submit these Reply Comments and urge the Federal Communications Commission to act in accordance with the views expressed herein.

**INDUSTRIAL TELECOMMUNICATIONS  
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